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In re Application of	:	DECISION
KAMLEITER et al.	:	
Application No.: 10/582,349	:	
PCT No.: PCT/EP2004/010434	:	
Int. Filing Date: 17 September 2004	:	
Priority Date: 11 December 2003	:	
Attorney Docket No.: 51648	:	
For: METHOD FOR THE PRODUCTION OF	:	
TUBULAR MEMBRANES	:	

This decision is in response to applicants' "SECOND RENEWED PETITION OF APPLICATION UNDER 37 CFR 1.47(A) AND/OR 1.43" filed 08 January 2008.

BACKGROUND

On 17 September 2004, applicants filed international application PCT/EP2004/010434, which designated the United States and claimed a priority date of 11 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 07 July 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 12 June 2006 (June 2006 being a Sunday).

On 09 June 2006, applicants filed a transmittal letter for entry in to the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 21 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) were required.

On 30 July 2007, applicants filed a submission which was properly treated as a request for status under 37 CFR 1.43 for inventor Wilhelm-N. Gudernatsch and as a petition under 37 CFR 1.47(a) for inventor Michael Kamleiter.

On 29 August 2007, a decision was mailed refusing the request for status under 37 CFR 1.43 and dismissing without prejudice the petition under 37 CFR 1.47(a).

On 16 October 2007, applicants filed a “RENEWED PETITION OF APPLICATION UNDER 37 CFR 1.47(A) AND/OR 1.43” which was accompanied by, *inter alia*, a supplemental declaration of facts by Martin Bartels and a new declaration of inventors.

On 26 November 2007, a decision was mailed refusing the request for status under 37 CFR 1.43 and dismissing without prejudice the petition under 37 CFR 1.47(a).

On 08 January 2008, applicants filed the instant “SECOND RENEWED PETITION OF APPLICATION UNDER 37 CFR 1.47(A) AND/OR 1.43”, which was accompanied by, *inter alia*, a new declaration of inventors and a supplemental declaration of facts by Martin Bartels.

DISCUSSION

Request Under 37 CFR 1.43

The submission filed 08 January 2008 has been reviewed and has been found in compliance with 37 CFR 1.42. The declaration filed 08 January 2008 is in compliance with 37 CFR 1.497(a)-(b).

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Items (1), (3), and (4) have been satisfied.

Item (2) has not been met. Applicants’ previous two petitions attempted to establish a refusal to sign. (The declaration of facts by Martin Bartels filed 30 July 2007 indicates that Mr. Kamleiter is suffering from severe mental illness and that he was represented by attorney-at-law Mr. Robert Dorr. The supplemental declaration of facts by Martin Bartels filed 16 October 2007 indicates that Mr. Dorr stated that his client refused to sign.) The instant petition attempts to establish that the non-signing inventor Michael Kamleiter cannot be located. (The supplemental declaration of facts by Martin Bartels filed 08 January 2008 states that a package containing a copy of the application was mailed to the last known address of non-signing inventor Michael Kamleiter and that the package was returned as undeliverable.) The two are distinct. See MPEP § 409.03(d), item I. “Inventor Cannot Be Reached” and item II. “Refusal to Join.” The reason for this change from attempting to establish a refusal to sign to attempting to establish that the inventor cannot be located is unclear. Rather than sending a copy of the application papers to Mr. Kamleiter’s representative Robert Dorr, the application papers were sent directly to Mr. Kamleiter, which were returned as undeliverable. No mention is made regarding Mr. Dorr’s representation of Mr. Kamleiter. A copy of the application papers should be sent to Mr. Dorr.

Attention is directed to MPEP § 409.03(d), item II, for a discussion of the requirements for establishing a refusal to sign.

If for some reason Mr. Dorr is no longer representing Mr. Kamleiter, it must be established that Mr. Kamleiter cannot be located. This would require an effort being made to locate Mr. Kamleiter, which may include contacting Mr. Dorr to determine whether Mr. Kamleiter left him with a forwarding address. Additionally, copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, and telegrams, that support a finding that the non-signing inventor or inventors could not be found or reached should be made part of the affidavit or declaration. See MPEP § 409.03, item I.

CONCLUSION

For the reasons set forth above, the request for status under 37 CFR 1.43 is **ACCEPTED**.

For the reasons set forth above, the petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition under 37 CFR 1.47(a) is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Failure to timely file a proper reply will result in abandonment of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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